



# LEGAL BRIEF

## WHAT TO DO IF YOU HAVE BEEN SUED

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The following information was created by the Clark County Courts Civil Law Self-Help Center and is provided here as a courtesy. It can also be accessed online at <http://www.clarkcountycourts.us/CivilSHC/civil-actions/response.html>.

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Being sued can be one of life's most stressful experiences. Although it may be tempting to ignore the lawsuit, it is important to recognize that doing so may result in a judgment being awarded against you by default. This, in turn, can lead to your wages being garnished, your bank accounts attached, etc.

How you choose to respond to the lawsuit will depend on the facts of your case. Prior to making a decision on how or whether to respond to the summons and complaint, you may wish to consult with a lawyer:

- Step 1: Understand The Deadline For Responding To The Lawsuit
- Step 2: Evaluate Your Options
- Step 3: File A Response With The Appropriate Court
- Step 4: Give The Plaintiff A Copy Of Your Response
- Step 5: Know What To Expect Next

PLEASE NOTE, this section should not be used for information on how to oppose a summary eviction or a small claims action. If a judgment has already been entered against you, please visit <http://www.clarkcountycourts.us/CivilSHC/civil-actions/judgment.html> for information on "How to Respond to a Judgment." If a judgment has already been entered against you and your wages are being garnished and/or your property is being attached, you may also wish to visit <http://www.clarkcountycourts.us/CivilSHC/small-claims/appeals.html> for information on "How to Contest a Writ of Execution."

### **STEP 1: UNDERSTAND THE DEADLINE FOR RESPONDING TO THE LAWSUIT**

However you decide to respond to the lawsuit, you should be aware that there are certain deadlines in which you must take action. Most lawsuits require you to file a response with a particular court within 20 days from the date that you were served with the summons and complaint. This time, however, may be shorter in certain instances, and it is important that you read the Summons that you were served.

If you do not file a written response within the required time, the Plaintiff may apply to the court for a default judgment and may be awarded everything that they requested in their complaint. After the Plaintiff gets a default judgment, they can then seek to attach your bank account(s), garnish your wages, etc.

## **STEP 2: EVALUATE YOUR OPTIONS**

Once you have been served with a civil complaint, you have a number of decisions that you need to make. Short of negotiating a resolution with the Plaintiff, you can:

**A. File an Answer.** This is the most common way of responding to a lawsuit. An Answer is your opportunity to respond to Complaint's factual allegations and legal claims and raise "affirmative defenses" to those claims. Filing an answer will prevent the Plaintiff from getting a default judgment against you.

**B. File a Motion to Dismiss.** There are a number of reasons that you can ask the court to dismiss the lawsuit. For instance, you can ask that the court dismiss for:

- Lack of Jurisdiction (if the court does not have personal jurisdiction over you)
- Insufficiency of Service of Process (if the Plaintiff did not properly serve the summons/complaint)
- Failure to State a Claim (if you can argue that there is no *legal* basis for the Plaintiff's claims)

This is not an exclusive list of the reasons for dismissing a case but all of these motions will have the effect of postponing the time in which you must file an Answer until the motion is resolved.

**C. Sue the Plaintiff.** You also have the option of pursuing your own claims, known as "Counterclaims," against the Plaintiff. Counterclaims fall into one of the two following categories:

- **Compulsory Counterclaims.** If your claim arises out of the same transaction which underlies the Plaintiff's claim, you have a "compulsory counterclaim" meaning that if you do not file a counterclaim, you will lose the right to file a separate lawsuit.
- **Permissive Counterclaims.** If your claim does not arise out of the same transaction which underlies the Plaintiff's claim, you have a "permissive counterclaim" meaning that you are not required to file it in the same action brought against you by the plaintiff. If you fail to file a permissive counterclaim, you may file it in a separate lawsuit.
- **Example of Compulsory vs. Permissive Counterclaims.** If you sued a contractor for defective work that he performed at your house, your contractor's claim for the unpaid balance of the work performed would be a compulsory counterclaim. If the contractor instead had a claim against you for crashing your car into his, that would be a permissive counterclaim which the contractor could choose, but would not be required, to pursue in the same action.

**D. Do Nothing.** In the event that you do nothing, the Plaintiff can, and likely will, apply to the court for a default judgment.

There may be other options available to you as well. Speaking with an attorney is the best way to evaluate your options as an attorney may be able to identify defenses that you would not and may even be able to assist you in settling your case out of court.

### **STEP 3: FILE A RESPONSE WITH THE APPROPRIATE COURT**

Once you have decided what response, if any, you intend to file with the court, you will need to complete the response and file it along with the required filing fees or fee waiver application by a certain deadline. The type of response that you file will depend on the facts of your case as discussed in Step 2.

Please note: If your case is in District Court, you will be required to file all documents electronically as of February 1, 2010. Please contact the court for further information.

### **STEP 4: GIVE THE PLAINTIFF A COPY OF YOUR RESPONSE**

In general, you must give the other party a copy of any document that you file with the Court. If that party is represented by an attorney, you must give the documents to the attorney instead of the other party. The way of giving the documents to the other party (or the attorney) is called “service of process” or “service.”

### **STEP 5: KNOW WHAT TO EXPECT NEXT**

What happens next will depend on what you filed. If you filed an answer, you will move onto the discovery phase of the lawsuit. If you filed an answer and a counterclaim, the Plaintiff will be required to file an answer to your counterclaim. If you filed a motion, a hearing will likely be scheduled for the court to make a decision.

**THE INFORMATION CONTAINED IN THIS PAMPHLET IS OF A GENERAL NATURE AND IS PROVIDED FOR YOUR ASSISTANCE AND CONVENIENCE. IT IS NOT INTENDED AS LEGAL ADVICE AND IS NOT A SUBSTITUTE FOR LEGAL COUNSEL. IF YOU HAVE ANY QUESTIONS AS TO HOW THE LAW IN THIS AREA AFFECTS YOU OR YOUR LEGAL RIGHTS, CONTACT A CIVILIAN ATTORNEY OR THE NELLIS AIR FORCE BASE LEGAL OFFICE FOR AN APPOINTMENT WITH A LICENSED ATTORNEY.**